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SCIENTIFIC-ATLANTA, INC.
INTELLECTUAL PROPERTY DEPARTMENT
5030 SUGARLOAF PARKWAY
LAWRENCEVILLE, GA 30044

EXAMINER

HOYE, MICHAEL W

ART UNIT PAPER NUMBER

2623

DATE MAILED: 10/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|----------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/008,429 | RODRIGUEZ, ARTURO A. | |
| | Examiner | Art Unit | |
| | Michael W. Hoye | 2623 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-81 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-81 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on July 7, 2006, directed to the *Ellis* reference, have been fully considered but they are not persuasive.

Regarding amended independent claim 1, the Applicant argues on page 24 that, "*Ellis* does not at least disclose, teach, or suggest [the claimed, "providing a download option to a user, the download option comprising an indication of when the purchasable recordable media content may be downloaded.]" It is also unclear from the Office Action what features of *Ellis* constitutes the download option."

In response, the Examiner respectfully disagrees with the Applicant because *Ellis* clearly provides a "download option to a user" as shown in Figs. 11-13, where Figs. 11-12 include a media list of download options and Fig. 13 shows a download option which specifically indicates that "Raiders of the Lost Ark" is presently available for download (also see ¶'s [0011, 0057, & 0058]). The newly amended claim language of, "the download option comprising an indication of when the purchasable recordable media content may be downloaded", is specifically met by Fig. 13 as described above.

Regarding dependent claim 4, the Applicant argues on page 25 that, "as pertaining to claim 4, Applicant respectfully disputes the allegation on page 3 of the Office Action that the unavailability of media due to bandwidth constraints is inherent in any VOD-like system, since unavailability may be due to other factors such as technical difficulties, among others."

In response, the Examiner respectfully disagrees because Ellis teaches in ¶ [0011] that, “In yet another embodiment, when the user selects a media listing, the system may determine the availability of the media. If the media is unavailable, the system may provide a user with an indication of the unavailability of the media...”, and more specifically, in ¶ [0057] Ellis teaches that, “the system may determine whether the media in a media list is currently available...As shown in Fig. 12, if the Raiders of the Lost Ark selection is not available for access, region 120 may be displayed to inform the user of the lack of availability.” As stated in the previous Office Action on page 3, “The Examiner interprets this as implying the system will, in general, omit any download option that is unavailable. Moreover, the unavailability of media due to bandwidth constraints is inherent in any VOD-like system (such as the system of Ellis).” More specifically, it is recognized or known to those of ordinary skill in the art that there is a finite or limited amount of bandwidth available as well as number of resources residing on a remote server that can be accessed or downloaded simultaneously by users at a given moment in time. Therefore, if a “download option that is no longer available to the user due to a greater than scheduled use of the download resources” [see claim 4] condition occurs, the system of Ellis will “omit the download option” since it is unavailable.

Regarding amended independent claim 37, the Applicant makes similar arguments as presented above for independent claim 1. And the Examiner respectfully disagrees for the reasons previously stated above corresponding to claim 1.

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Regarding independent claim 76, the Applicant argues on page 26 that, “none of claims 1, 4, nor 31 recite the above emphasized claim features [i.e. “adding a new download option proximately in time to when a portion of download resources are freed up”].”

In response, while the Examiner does not completely agree with the Applicant’s argument above, the Examiner has provided additional explanation in the rejection of claim 76 to specifically and clearly address the claim limitation emphasized by the Applicant, where the claimed, “adding a new download option proximately in time to when a portion of download resources are freed up”, is specifically met by the Ellis reference in ¶ [0057] which teaches that, “When the media becomes available, the system may notify the user of the availability...” In addition to, the Examiner refers to relevant remarks made for claims 1 and 4 as stated above.

Regarding independent claim 78, the Applicant makes similar arguments as presented for claim 76 above on pages 26-27, and the Examiner respectfully repeats relevant remarks as stated above for claim 76.

Regarding the Applicant’s remarks on pages 27-28 and filing of a 1.132 declaration with regards to the Rodriguez et al (US 2005/0071882) reference, the Examiner has withdrawn the rejections made using the Rodriguez et al reference as used in the previous Office Action. However, the claims are rejected based on new grounds of rejection as presented below.

Regarding claims 8, 19-23, 44 and 55-59, the Applicant traverses the Examiners taking of Official Notice and in response the Examiner has provided references in support of the previous taking of Official Notice as presented in the rejection below.

Regarding claim 75, the Applicant's argument on pages 29-30 is moot in view of the new grounds of rejection.

Regarding claims 27, 32-33, 63 and 68-69, the Applicant argues on pages 30-33 that the combination of Ellis and Haddad is, "more likely the result of improper hindsight reasoning" (specifically see pg. 31).

In response, the Examiner respectfully disagrees with the Applicant because both the Ellis et al and Haddad references are directed to interactive audiovisual distribution systems. More specifically, both references are related to systems for downloading media content from a remote server. Therefore, one of ordinary skill in the art would easily look to other similar references in order arrive at the combination as presented. Furthermore, in response to the Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Regarding claims 35 and 71, the Applicant argues on pages 33-36 that that the combination of Ellis and Hopper is, "more likely the result of improper hindsight reasoning" (specifically see pg. 34). The Applicant also argues that, "there is no suggestion or teachings of portable medium drives in Ellis or Hooper" (see pg. 33). In addition to, the Applicant argues on

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page 34 that, “the Hassell et al. patent publication, “in the Office Action on page 12 is of no relevance for at least the reason that Hassell post-dates the filing date of the present application by approximately two-years.”

In response, the Examiner respectfully disagrees with the Applicant because both the Ellis et al and Hopper references are directed to interactive audiovisual distribution systems including video on demand. More specifically, both references are related to systems for downloading media content from a remote server. Therefore, one of ordinary skill in the art would easily look to other similar references in order arrive at the combination as presented. Furthermore, in response to the Applicant’s argument that the Examiner’s conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to the Applicant’s arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to the Applicant’s argument regarding the Hassell et al patent publication, the Examiner respectfully disagrees with the Applicant because the reference has priority back to September 17, 1998, since the application is a continuation of application No. 10/383,281, filed

on Mar. 5, 2005, which is a continuation of application No. 09/157,256, filed on Sept. 17, 1998. Therefore, the Hassell et al patent application publication is a valid reference and pre-dates the filing date of the present application by over three years.

Regarding claims 36 and 72, the Applicant argues on pages 36-39 that that the combination of Ellis and Greenwood is, "more likely the result of improper hindsight reasoning" (specifically see pg. 34). The Applicant also argues that, "there is no suggestion or teachings of portable medium drives in Ellis or Hooper" (see pg. 37). In addition to, the Applicant argues on page 36 that, "the Hassell et al. patent publication, "in the Office Action on page 13 is of no relevance for at least the reason that Hassell post-dates the filing date of the present application by approximately two-years."

In response, the Examiner respectfully disagrees with the Applicant for similar reasons as described above for claims 35 and 71. In addition to, both the Ellis et al and Greenwood et al references are directed to interactive audiovisual distribution systems. More specifically, both references are related to systems for downloading media content from a remote server. Therefore, one of ordinary skill in the art would easily look to other similar references in order arrive at the combination as presented. Furthermore, in response to the Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not

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include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper.

See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claim 1-4, 9, 16-17, 24, 26, 30-31, 34, 37-40, 45, 52-53, 60, 62, 66-67, 70 and 73-79 are rejected under 35 U.S.C. 102(e) as being anticipated by Ellis et al (US 2002/0042913).

As to Claim 1, note the Ellis et al reference which discloses a video distribution system comprising a remote server, which allows a user to select various media for download and viewing. In addition, the system is capable of tracking the availability of said media in real-time and alerting the user to any changes (see Abstract; Figs. 1, 12, & 13; and ¶'s [0011, 0057, & 0058]). The claimed step of "providing a download option to a user" is met by Ellis as shown in Figs. 11-13, where Figs. 11-12 include a media list of download options and Fig. 13 shows a download option which specifically indicates that "Raiders of the Lost Ark" is presently available for download (also see ¶'s [0011, 0057, & 0058]). The claimed, "the download option comprising an indication of when the purchasable recordable media content may be downloaded", is specifically met by Fig. 13 as described above. The claimed, "updating the download option proximately in time to when a change in download resources changes the

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availability of the download option”, is also met by the download option of Fig. 13, as well as Fig. 12, as described above.

Claims 2-3, 37-39, 73 and 74 correspond to or are encompassed by Claim 1. Thus, each is analyzed and rejected as previously discussed.

As to Claim 4, Ellis teaches in ¶ [0011] that, “In yet another embodiment, when the user selects a media listing, the system may determine the availability of the media. If the media is unavailable, the system may provide a user with an indication of the unavailability of the media...”, and more specifically, in ¶ [0057] Ellis teaches that, “the system may determine whether the media in a media list is currently available...As shown in Fig. 12, if the Raiders of the Lost Ark selection is not available for access, region 120 may be displayed to inform the user of the lack of availability.” As stated in the previous Office Action on page 3, “The Examiner interprets this as implying the system will, in general, omit any download option that is unavailable. Moreover, the unavailability of media due to bandwidth constraints is inherent in any VOD-like system (such as the system of Ellis).” More specifically, it is recognized or known to those of ordinary skill in the art that there is a finite or limited amount of bandwidth available as well as number of resources residing on a remote server that can be accessed or downloaded simultaneously by users at a given moment in time. Therefore, if a “download option that is no longer available to the user due to a greater than scheduled use of the download resources” [see claim 4] condition occurs, the system of Ellis, in the embodiment described above, will “omit the download option” since it is unavailable.

Claim 40 corresponds to Claim 4. Thus, it is analyzed and rejected as previously discussed.

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As to Claim 9, Ellis further teaches the system does not check the media's availability until after the user requests said media. (citations of Claim 1). Accordingly, Ellis et al anticipate each and every limitation of Claim 9.

Claim 45 corresponds to Claim 9. Thus, it is analyzed and rejected as previously discussed.

As to Claims 16 and 17, Ellis et al further discloses the use of a VOD server (which also encompasses a broadcast file server, see ¶'s [0056-0057]). Accordingly, Ellis et al anticipate each and every limitation of Claims 16 and 17.

Claims 52 and 53 correspond to Claims 16 and 17, respectively. Thus, each is analyzed and rejected as previously discussed.

As to Claim 24, it is inherent in Ellis's system (i.e., pay-per-view) that some form of data structure contain the recited limitations. Accordingly, Ellis et al anticipate each and every limitation of Claim 24.

Claim 60 corresponds to Claim 24. Thus, it is analyzed and rejected as previously discussed.

As to Claim 26, Ellis further teaches that after the system determines a user selection is unavailable, the system will allow a user to download the same program at a later time (i.e., once it becomes available user is alerted and given opportunity to download). (Citations of Claim 1). Accordingly, Ellis et al anticipate each and every limitation of Claim 26.

Claim 62 corresponds to Claim 26. Thus, it is analyzed and rejected as previously discussed.

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As to Claim 30, Ellis further teaches the user is allowed to decide if he or she wants to be notified when a program becomes available (i.e., put on “stand-by”). (Fig. 12). Accordingly, Ellis et al anticipate each and every limitation of Claim 30.

Claim 66 corresponds to Claim 30. Thus, it is analyzed and rejected as previously discussed.

As to Claim 31, Ellis further discloses that a user is allowed to select an alternate program if his or her initially selected program is unavailable. (Fig. 12). For example, since *Raiders of the Lost Art* is unavailable, the user is allowed to select the *Color Purple* or *Saving Private Ryan*. Accordingly, Ellis et al anticipate each and every limitation of Claim 31.

Claim 67 corresponds to Claim 31. Thus, it is analyzed and rejected as previously discussed.

The limitations of Claim 34 are encompassed within those of Claim 1. By keeping track of the programs available on the server, Ellis’s system will continuously update the download options (i.e., programs). Accordingly, Ellis et al anticipate each and every limitation of Claim 34.

Claim 70 corresponds to Claim 34. Thus, it is analyzed and rejected as previously discussed.

As to Claim 75, the claimed memory, the logic, and the processor are located in a media client device is met by control circuitry equipment 15 as shown in Fig. 1 (see ¶ [0035-0038 and 0040]), which includes memory 17 and control circuitry (i.e. logic and processor).

The limitations of Claim 76 are combinations of limitations from Claims 1, 4, and 31. In addition to, the claimed, “adding a new download option proximately in time to when a portion

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of download resources are freed up”, is specifically met by the Ellis reference as described in the rejections of the claims listed above where in ¶ [0057] Ellis teaches that, “When the media becomes available, the system may notify the user of the availability...” Accordingly, Ellis et al anticipate each and every limitation of Claim 76.

Claim 78 corresponds to Claim 76. Thus, it is analyzed and rejected as previously discussed.

As to Claim 77, Ellis further teaches the system can update itself (i.e., determine when a program becomes available) over time. (citations of Claim 1). Accordingly, Ellis et al anticipate each and every limitation of Claim 77.

Claim 79 corresponds to Claim 77. Thus, it is analyzed and rejected as previously discussed.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5-7, 15, 18, 41-43, 51 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al.

As to claim 5, Ellis discloses notifying the user when media becomes available as described above in claims 1 and 4. Ellis does not explicitly disclose the claimed step of updating further comprises the step of adding a download option that is available to the user due to a less

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than scheduled use of the download resources. However, the Examiner takes Official Notice that it is notoriously well known in the art to add a download option when less than the maximum amount of scheduled download resources are being used for the advantage of maximizing the total use of available bandwidth and provide one or more users with additional options for selection. Therefore, it is submitted that it would have been clearly obvious to one of ordinary skill in the art at the time of the invention to add a download option that is available to the user due to a less than scheduled use of the download resources for the advantages given above.

As to claim 6, the Ellis et al reference does not explicitly disclose the claimed added download option is available due to a second user canceling a previously selected download option. However, the Examiner takes Official Notice that it is notoriously well known in the art of downloading media from a remote server to a client to add a download option or make an additional download option available due to a second user canceling a previously selected download option for the advantage of allowing one or more other users to access media for download and maximize the use of available bandwidth.

As to claim 7, the Ellis et al reference discloses that the media or download option may be selected from a video-on-demand server (see ¶ [0057]), where video-on-demand media options are available to the user over a plurality of time intervals. Ellis does not explicitly disclose the claimed “added download option” as described above in claim 5. However, the Examiner takes Official Notice that it is notoriously well known in the art of downloading media from a remote server to a client to have an added download option available to the user as described above in claim 5.

Claims 41-43 correspond to Claims 5-7, respectively. Accordingly, each is analyzed and rejected as previously discussed.

The limitations of Claim 15 are encompassed by those of Claim 7. Thus, it is analyzed and rejected as discussed therein.

Claim 51 corresponds to Claim 15. Thus, it is analyzed and rejected as previously discussed.

As to claim 18, the Ellis et al reference teaches that the availability of the media content is based on the download resources as described above in claim 1. Ellis does not explicitly state that the download resources comprise downstream bandwidth, signaling support and server storage. However, the Examiner takes Official Notice that it is notoriously well known in the art of downloading media from a remote server to a client that the availability of the media may be based on the downstream bandwidth capacity, signaling support and/or server storage capacity since each of these elements may directly effect download transmission success and/or media content availability at the client side.

Claim 54 corresponds to Claim 18. Thus, it is analyzed and rejected as previously discussed.

6. Claims 8 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al, in view of Schaffer et al (USPN 6,934,964).

As to Claim 8, Ellis fails to disclose when the updating occurs. However, the Schaffer et al reference teaches periodic updating of network schedule data relating to available media content deliverable through a channel (see col. 15, lines 20-23, lines 64-67 and col. 16, lines 18-

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31). Therefore, it would have been obvious to one having ordinary skill in this art at the time of Applicant's invention to modify the system of Ellis et al with the system of Schaffer et al for the advantage of providing a more efficient delivery method that occurs on a periodic basis.

Claim 44 corresponds to Claim 8. Thus, it is analyzed and rejected as previously discussed.

7. Claims 10-11, 19, 21-22, 27, 32-33, 46-47, 55, 57-58, 63 and 68-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al, in view of Haddad (USPN 5,555,441).

As to claim 10, Ellis fails to specifically teach the claimed "step of updating further comprises the step of updating pricing for the download option. However, the Haddad patent teaches prompting the user for a new order by interactively presenting the list of titles along with pricing information (see col. 8, lines 27-46; col. 7, lines 38-43 and col. 3, lines 1-4). Therefore, it would have been obvious to one having ordinary skill in the art at the time of Applicant's invention to modify the system of Ellis et al with the system of Haddad for the advantage of providing updated prices for an available download option.

As to claim 11, the Ellis et al reference does not explicitly disclose the claimed "step of requesting the download of the purchasable recordable media content, wherein said download is defined by the download option that is selected by the user." However, the Haddad patent specifically teaches that the customer may select programs from a list of titles along with a price schedule for the various classes of service (see col. 8, lines 27-46; col. 7, lines 38-43 and col. 3, lines 1-4). Therefore, it would have been obvious to one having ordinary skill in the art at the time of Applicant's invention to modify the system of Ellis et al with the system of Haddad for

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the advantage of providing the user with a variety of options as to how the media content is transmitted to the user.

Claims 46-47 correspond to Claims 10-11. Thus, each claim is analyzed and rejected as previously discussed.

As to Claim 19, Ellis fails to specifically teach whether the system will alert the user when the media download is complete. However, the Haddad patent teaches alerting the user when a media download is complete (see col. 9, lines 24-36). Therefore, it would have been obvious to one having ordinary skill in the art at the time of Applicant's invention to modify the system of Ellis et al with the system of Haddad for the advantages of allowing a user to view the media content immediately after the download process is complete and providing a more user friendly download process.

As to claim 21, the claimed step of notifying further includes the step of providing a graphical display message is met by the Haddad reference as described above in claim 19, where notifications are provided to a user by displaying confirmation messages (see col. 8, lines 45-53 and col. 9, lines 31-35).

As to claim 22, the claimed step of notifying further includes the step of providing a displayed code on a media client device is met by the Haddad reference as described above in claim 19, where notifications are provided to a user, including displaying codes on a media client device (see col. 8, lines 45-58 and col. 9, lines 31-35).

Claims 55 and 57-58 correspond to Claims 19 and 21-22, respectively. Thus, each is analyzed and rejected as previously discussed.

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As to Claim 27, Ellis fails to teach whether the user can select a different duration than that initially selected (the remainder of the limitations were discussed under the rejection of Claim 26 above). However, within the same field of endeavor, Haddad discloses a similar system which allows a user to specify a variety of download durations. (Col. 2, Ln. 45-Col. 3, Ln. 5). Accordingly, it would have been obvious to one having ordinary skill in this art at the time of Applicant's invention to combine the systems of Ellis and Haddad in order to provide a system which allows a user wider download flexibility.

Claim 63 corresponds to Claim 27. Thus, it is analyzed and rejected as previously discussed.

As to Claim 32, Haddad further teaches that product prices vary according to the delivery method. (citations of Claim 27). Thus, the Examiner interprets this as meaning the faster the download time, the more expensive. Therefore, if a user requests an immediate download, he or she will pay a premium price. Accordingly, the combined systems of Ellis and Haddad render obvious all limitations of Claim 32.

Claim 68 corresponds to Claim 32. Thus, it is analyzed and rejected as previously discussed.

As to Claim 33, Haddad further teaches that prices will vary (i.e., updating) depending upon the download time. (Col. 3, Ln. 1-5). Accordingly, the combined systems of Ellis and Haddad render obvious all limitations of Claim 33.

Claim 69 corresponds to Claim 33. Thus, it is analyzed and rejected as previously discussed.

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8. Claims 12-14 and 48-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al, in view of Haddad, in further view of Hassell et al (US 2004/0128685).

As to claims 12-14, Ellis discloses the use of a video on demand session (see ¶'s [0056-0057]). Ellis and Haddad do not explicitly disclose the claimed purchasable recordable media content is downloaded as an in-band file transmission (claims 12 and 14), or an out-of band file transmission (claim 13). However, transmitting media content via an in-band file transmission and/or an out-of-band file transmission is well known to those of ordinary skill in the art. Furthermore Hassell et al specifically teaches that program data may be provided on an in-band digital channel, an out-of-band digital signal, or by any other suitable data transmission technique (¶ [0024]). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to have transmitted media content via an in-band and/or out-of-band file transmission for the advantages associated with each type of signal configuration as well as more efficient bandwidth usage.

Claims 48-50 correspond to Claims 12-14, respectively. Thus, each is analyzed and rejected as previously discussed.

9. Claims 20, 23, 56 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al, in view of Haddad, in further view of Schaffa et al (USPN 5,973,685).

As to Claims 20 and 23, Ellis et al and Haddad fail to specifically teach the step of notifying further includes the step of providing an audible signal (claim 20) and the step of notifying further includes the step of providing visual and aural notification (claim 23). However, the Schaffa et al patent explicitly teaches that when a data availability message arrives,

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the microcontroller displays it to the user in video or audio form, where the data availability message can be an on-screen symbol (or icon), on-screen text (stationary or scrolling) or an audio notification such as a beep (see col. 3, lines 40-51). Therefore, it would have been obvious to one having ordinary skill in this art at the time of Applicant's invention to modify the system of Ellis and Haddad with the additional teachings of Schaffa et al for the advantages of providing any number of alerting mechanisms and allowing a more user friendly download process.

Claims 56 and 59 correspond to Claims 20 and 23, respectively. Thus, each is analyzed and rejected as previously discussed.

10. Claims 25, 28-29, 61, 64-65 and 80-81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al, in view of Haddad, in further view of Deshpande (USPN 6,987,728).

Regarding claims 25 and 28-29, Ellis fails to teach providing an updated download option that, if selected, includes downloading the media content earlier in time, at the same time but at a different quality lever, or at a different time and at a different quality level (the remainder of the limitations were discussed under the rejection of Claim 26 above). However, within the same field of endeavor, Haddad discloses a similar system which allows a user to specify a variety of download durations that may be scheduled (Col. 2, line 45 - Col. 3, line 5, also see col. 8, lines 22-45), in addition to, Deshpande specifically teaches adjusting the quality level in order to achieve a successful transmission (see col. 4, line 58 – col. 5, line 10). Accordingly, it would have been obvious to one having ordinary skill in this art at the time of Applicant's invention to

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combine the system of Ellis, with the additional systems of Haddad and Deshpande in order to provide a system which allows a user wider download flexibility.

Claims 61 and 64-65 correspond to Claims 25 and 28-29, respectively. Thus, each is analyzed and rejected as previously discussed.

The limitations of Claims 80 and 81 are all encompassed within the combination of the Ellis et al, Haddad and Deshpande references (as discussed under the rejections of Claims 1, 11, 18, 25 and 28).

11. Claims 35 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al, in view of Hooper et al (USPN 5,414,455), in further view of Hassell et al (US 2004/0128685).

As to Claim 35, Ellis discloses that user equipment 14 may include video recorder 9 which may be a video cassette recorder, a digital video recorder, a personal video recorder such as TiVo, or other suitable recorder (see ¶ [0038] and Fig. 1). Ellis fails to disclose the claimed “step of downloading the purchasable recordable media content into a portable media drive coupled to a media client device at a faster rate than the real-time playback rate.” However, within the same field of endeavor, Hooper et al discloses a similar system which allows the user to download media at a faster than real-time playback rate. (Col. 2, Ln. 41-48). Moreover, the Hassell et al reference specifically teaches the use of a portable media drive coupled to a media client device as met by digital storage device 31 and/or secondary storage device 32, which are both coupled to set-top box 28, and may include a writable optical storage device (such as a DVD player capable of handling recordable DVD discs), a magnetic storage device, or any other

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digital or analog storage device (see ¶'s [0019-0024] and Figs. 2-3). Therefore, it would have been obvious to one having ordinary skill in this art at the time of Applicant's invention to combine the systems of Ellis and Hooper in order to provide faster acquisition of recordable media or programming, and in further combination with the system of Hassell et al for the advantage of providing the recordable media on a portable medium.

Claim 71 corresponds to Claim 35. Thus, it is analyzed and rejected as previously discussed.

12. Claims 36 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al in view of Greenwood et al (USPN 5,568,181), in further view of Hassell et al (US 2004/0128685).

As to Claim 36, Ellis discloses that user equipment 14 may include video recorder 9 which may be a video cassette recorder, a digital video recorder, a personal video recorder such as TiVo, or other suitable recorder (see ¶ [0038] and Fig. 1). Ellis fails to disclose the claimed "step of downloading the purchasable recordable media content into a portable media drive coupled to a media client device at a slower rate than the real-time playback rate." However, within the same field of endeavor, Greenwood et al discloses a similar system which allows the user to download media at a slower than real-time playback rate. (Col. 3, Ln. 5-6 & Col. 8, Ln. 20-23). Moreover, the Hassell et al reference specifically teaches the use of a portable media drive coupled to a media client device as met by digital storage device 31 and/or secondary storage device 32, which are both coupled to set-top box 28, and may include a writable optical storage device (such as a DVD player capable of handling recordable DVD discs), a magnetic

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storage device, or any other digital or analog storage device (see ¶'s [0019-0024] and Figs. 2-3).

Therefore, it would have been obvious to one having ordinary skill in this art at the time of Applicant's invention to combine the systems of Ellis and Hooper in order to provide a slower acquisition of recordable media or programming for the advantage of providing or freeing-up additional bandwidth for other uses, and in further combination with the system of Hassell et al for the advantage of providing the recordable media on a portable medium.

Claim 72 corresponds to Claim 36. Thus, it is analyzed and rejected as previously discussed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael W. Hoyer whose telephone number is **571-272-7346**. The examiner can normally be reached on Monday to Friday from 8:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller, can be reached at **571-272-7353**.

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Michael W. Hoye
October 20, 2006


JOHN MILLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600